13

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 247-97

JOSIAH H. BELL, PLAINTIFF IN ERROR,

vs.

THE STATE OF NORTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

FILED MAY 24, 1897.

SUPREME COURT OF THE UNITED STATES.

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1 Circuit court, fourth circuit.

UNITED STATES OF AMERICA, *North Carolina, district:*

The President of the United States to the honorable the judges of the supreme court of the State of North Carolina, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, being the highest court of law and equity of the said State in which a decision could be had in the said suit, between the State of North Carolina and Josiah L. Bell, wherein was drawn in question the validity of a statute or ordinance of, and an authority exercised under the said State, on the ground of its being repugnant to the Constitution and laws of the United States, and the decision was in favor of such its validity, and against the exemption specially set up or claimed under said Constitution and laws of the United States, a manifest error hath happened to the great damage of the said Josiah L. Bell, as by his complaint appears:

We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties
2 aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the first Monday of April next, in the said Supreme Court, to be then and there held, that the record of the proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the last Monday, in November, 1866, and in the 91st year of the independence of the United States.

Issued the 1st day of March, 1867.

[SEAL.] N. J. RIDDICK,
Clerk of the Circuit Court of the U. S.
For the district of North Carolina.

Endorsed: Copy—writ of error.

3 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the State of North Carolina, greeting:

You are hereby cited and admonished to be, and appear, at a supreme court of the United States to be holden at Washington on the Monday of next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for

the district of North Carolina, wherein Josiah L. Bell is plaintiff, and the said State of North Carolina is defendant in error, to show cause, if any there be, why the judgment in the said writ of error, mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable , one of the justices of the supreme court of the State of North Carolina, this 21st day of February, A. D. 1867.

Feb'y 26th, 1867.

R. M. PEARSON,
Ch. J. S. C.

Endorsed: Citation—original.

4 *Bond.*

Supreme Court of the United States.

THE STATE OF NORTH CAROLINA
vs.
JOSIAH L. BELL.

Know all men by these presents, that we, Josiah L. Bell, Durant H. D. Bell, and Henry Reiger are held and firmly bound unto the State of North Carolina, in the sum of one thousand dollars, to be paid to the said State, her certain attorneys or assigns, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 26th day of Februrry, A. D. 1867.

Whereas, the above-named J. L. Bell has presented a writ of error to the Supreme Court of the United States, to reverse the judgement rendered in the above-entitled suit by the supreme court of the State of North Carolina: Now therefore, the, condition of this obligation is such, that if the said J. L. Bell shall prosecute the said writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation to be void, otherwise the same shall be and remain in full force and virtue.

5 J. L. BELL. [SEAL.]
D. H. L. BELL. [SEAL.]
HENRY RIEGER. [SEAL.]

Sealed and delivered in the presence of—
JAS. RUMLEY.

STATE OF NORTH CAROLINA, *County of Carteret:*

On this 26th day of February, A. D. 1867, before me, James Rumley, clerk of the county court, personally appeared, Josiah L. Bell, Durant H. L. Bell, and Henry Reiger, the foregoing obligors, who

being duly sworn according to law, say that they are severally worth one thousand dollars, over and above their just debts and liabilities.

In testimony whereof, I have hereunto set my hand and seal of office the day and year first above written.

[SEAL.] JAS. RUMLEY,
Clerk of the County Court of Carteret County.

6 STATE OF NORTH CAROLINA, *ss:*

In the supreme court of North Carolina, begun and held at the capitol, in the city of Raleigh, on the second Monday of January, in the year of our Lord one thousand eight hundred and sixty-seven, by and before the Honorable Richmond M. Fearson, chief justice, and the Honorable William H. Battle, and the Honorable Edwin G. Reade, judges of the same court.

Be it remembered that heretofore, to wit: on the fifth day of June, in the year of our Lord one thousand eight hundred and sixty-six, there was filed in the office of said court the transcript of an appeal from the superior court of law of Carteret county, the State against Josiah L. Bell, in the words and figures following, that is to say:

STATE OF NORTH CAROLINA, *Carteret county:*

Be it remembered that a superior court of law, held for Carteret county, at the court-house in Beaufort, on the seventh Monday after the fourth Monday in March, in the year of our Lord one thousand eight hundred and sixty-six, before the Honorable E. J. Warren, judge, upon the oath of D. G. Garner, James Ward, Samuel C. Garner, D. H. Z. Bell, B. P. Dickerson, David S. Guinn, Stancel C. Bell, Henry Reiger, R. W. Bell, John Beveredge, William B. Duncan, George W. Spingle, D. B. Wharton, J. W. Noe, J. Z. Goodwin, E. Garner, 3d, Ross Simpson, and William B. Bell, good and lawful men of the county aforesaid, duly summoned, drawn, and sworn, and charged to enquire for the State,
7 of and concerning all causes and offences committed within the bounds of the said county; it is presented in manner and form as follows: The jurors for the State upon their oath present that at and in the county aforesaid, on the 10th of January, 1866, one William N. Bell was and since then hath been and still is sheriff of said county, and as such authorized and required to ascertain and collect divers taxes and other dues to the State, before then levied by law, upon divers persons in said county; and to this end to examine on oath all persons in said county liable to taxes touching the subject thereof. And that said J. Z. Bell, on the day and year aforesaid was, and for a long time previous thereto, had been and still is, in the county aforesaid, a merchant carrying on the business of buying and selling goods, and as such, had theretofore made large purchases of goods, wares and merchandize, other than cotton, tobacco, turpentine, rosin, tar, spirituous liquors, wines and cordials, on the amount whereof he had become, and then and there was liable to taxes accruing to the State as aforesaid. And that in order to ascertain the amount of such purchases and the taxes due thereon, the

said William N. Bell, sheriff as aforesaid, being then and there duly empowered to administer an oath for the purpose aforesaid, then and there offered to administer an oath for the purpose aforesaid, then and there offered to administer the same to the said J. Z. Bell and to examine him, the said J. Z. Bell, on oath touching the amount of his purchases as aforesaid and the taxes accruing against him therefor.

8 And that the said J. Z. Bell then and there, although often requested and required so to do, wilfully, unlawfully and contumaciously neglected and refused to be sworn and to disclose the matters and things touching his liability for taxes as aforesaid, contrary to the form of the statute in such cases made and provided, and against the dignity and peace of the State. Whereupon, the sheriff of said county is commanded that he cause the said J. Z. Bell to come and answer. And afterwards, to wit, at the term of said court held for the county of Carteret, on the seventh Monday after the fourth Monday in March, in the year of our Lord one thousand eight hundred and sixty-six, before the honorable E. J. Warren, judge, cometh the said J. Z. Bell in his own proper person, and having heard the said indictment read, he, the same J. Z. Bell, sayeth that he is not guilty thereof, and he puts himself upon the country, and W. F. Faircloth, the solicitor, who prosecutes for the State in this behalf, doth the like: therefore, let a jury come of good and lawful men, by whom the truth of the matter may be better known. And thereupon, the following jurors, to wit: George R. Bell, James McDurman, Riley Lewis, Henry Russell, John W. Piner, D. H. Brooks, Silas Webb, D. Russell, Melvin J. Davis, William Brooks, Solomon Phillips, John Y. Felcher, being chosen, tried and sworn to speak the truth of and concerning the premises in the said specified, do say upon their oath that the said J. Z. Bell is guilty thereof

9 in manner and form as charged in the bill of indictment. And it is therefore considered by the court that the said J. L. Bell shall pay a fine of dollars, and that he stand committed to the custody of the sheriff until the said fine and costs of the prosecution be paid. From the above judgment the said J. L. Bell prays an appeal to the Supreme Court, and it is allowed him upon giving bond with J. L. Bell, D. H. Z. Bell and J. Y. Dennis, as sureties. Appeal bond executed and herewith sent.

By the honorable E. J. Warren: This was an indictment for a misdemeanor under the ordinance of the convention entitled "An ordinance to provide revenue for the year 1865." It was in evidence that William N. Bell was duly appointed sheriff of Carteret county, according to said ordinance and gave bond accordingly; that he continued to act as sheriff until February, 1866; that the defendant was a merchant doing business in the town of Beaufort, Carteret county, from 1863 to 1866, and dealt in provisions such as flour, sugar, coffee, spirituous liquors, and tobacco; that he purchased and sold these articles both before and after the 18 October, 1865; that in the month of January, 1866, the said sheriff demanded a statement, on oath, from the defendant of the amount of taxes due from him under the ordinance, and that he refused to do so, but offered to pay what

was due from him for taxes from the passage of the ordinance to the close of the year, which the sheriff declined to do, deeming that he had no authority to collect taxes for part of the year 1865,
10 and therefore gave bond for his appearance at the next term of the superior court. It was also in evidence, that until May, 1865, the defendant had received a license to trade from the supervising special agent of the Treasury Department, and had paid a tax of one per cent. on their purchases to the military authorities, then of the United States and occupying Carteret county, and also, a tax varying from three to five per cent. to the government of the United States, as required by the War Department; and that they supplied the army and the country within the federal lines at the time. That by orders from the War Department the system was discontinued in May, 1865, and that thereafter, during that year, that the defendant paid the internal revenue tax imposed by the act of Congress, and continued to trade under license from the said supervising special agent; that there were no court officers in the county of Carteret in the exercise of their functions prior to the organization of the provisional government in North Carolina, and that up to that time, the town of Beaufort was in possession of the federal forces. The court charged the jury that if they believed the evidence, the defendant was guilty. There was a verdict of guilty and judgment. from which the defendant prayed an appeal, which was granted.

I, W. H. Sweetzer, clerk of the superior court of law for the county of Carteret, do hereby certify that the foregoing is a full, true and correct transcript of the record of said court in the
11 case of the State against J. L. Bell.

In testimony whereof, I do hereunto subscribe my name and affix the seal of said court, at office in Beaufort, this 22 day of May, 1866.

W. H. SWEETZER, *Clerk.*

And now, this term, to wit, January term, 1867, as aforesaid, the opinion of the court is delivered by the honorable William H. Battle, one of the judges thereof, as follows:

19 l., Carteret.

12 NORTH CAROLINA:

Supreme Court, January term, 1867.

THE STATE
v.
JOSIAH L. BELL.

Battle, J.—This case was argued before us at the last term of the court, but as the questions presented in it were found to be novel, as well as important, we deemed it proper to take time for deliberation and to request another argument. It has accordingly been again discussed with much zeal and ability by the counsel on both sides,

and we are now prepared to state the reasons which have conducted us to the conclusion at which we have arrived:

The indictment against the defendant is founded upon an ordinance of the convention of 1865, which was ratified on the 18th day of October, in that year, and is entitled "An ordinance to provide revenue for the year eighteen hundred and sixty-five."

By the 19th section, a tax is imposed, of "one-half of one per cent. on the amount of all purchases made in or out of the State, whether for cash or on credit, by any merchant, &c., buying or selling goods, wares, or merchandise, of whatever name or description; provided, however, that purchases of cotton, tobacco, turpentine, rosin, tar, and spirituous liquors, wine, and cordials, shall not be included in the amount of purchases on which the tax laid by this section is to be estimated." This tax was, by the first section, to apply and operate during the twelve months next preceded the first of January, 1866. By the 21st section it is provided that "to ascertain the amount of taxes due from any person, company, corporation, or firm, the sheriff, or his deputy, is hereby authorized and empowered to examine on oath any person &c., and in case any such person
13 shall refuse fully to answer on oath, such person shall be deemed guilty of a misdemeanor, and said sheriff, or deputy sheriff, shall commit him to prison, unless he shall enter into recognizance, with good security, in such sum as shall be required, to appear before the superior court of law of his county, at its next term, to answer the charge, and, on conviction, he shall be fined or imprisoned at the discretion of the court." The defendant, who was a citizen of the county of Carteret, and had carried on the business of a merchant in that county, by buying and selling goods, wares, and merchandise, during the whole of the year of 1865, refused to make the oath required by the ordinance, but offered to swear to the amount of his purchases after the 18th day of October, 1865, that being the day on which the ordinance was ratified.

To this proposition the sheriff refused to accede and proceeded to bind over to the next superior court of law for the county, at which court he was indicted for a violation of the ordinance, tried, and convicted, and from the judgement then pronounced against him, he has appealed to this court. On the argument here, the counsel for the defendant contends, that the ordinance of the convention, under which his client was convicted and sentenced, is unconstitutional and void:

First. Because it is an ex post facto law, and, therefore, prohibited by the Constitution of the United States, which declares that no State shall "pass any bill of attainder or ex post facto law—Case, U.
S. art. 1, section 10, par. 1—it becomes necessary, then, to en-
14 quire what is such law." That question was answered and settled by the Supreme Court of the United States, in the case of Calder *vs.* Bull, 3 Dallas, 86, in which it was defined to be to be as follows: First. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action. Second. Every law that aggravates a

crime, or makes it greater than it was before it was committed. Third. Every law that changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed. Fourth. Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission "of the offence, in order to convict the offender." This definition thus given by Judge Chase, in pronouncing the opinion of the court, has been universally accepted and approved, and it shows that an ex post facto law in the sense in which it is used in the Constitution, applies to matters of a criminal nature, and to them only. 1 Kent's Com., 409, 3; Story's Com. on the case 212, State *vs.* Bond, 4 Jones, 9. The 24th section of our bill of rights, which says, that "retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, wherefore no ex post facto law ought to be made," has received a similar construction. Dickinson *vs.* Dickinson, 3 Murph., 327. Tried by the test of this difinition of an ex post facto law, the ordinance of the convention is not in the slightest degree obnoxious to censure. It does not de-
15 clare criminal any action done by the defendant before it was passed, nor does it aggravate the criminality of any act which he had previously committed, nor does it change or increase the punishment, or any alleged crime, nor change the rules of evidence to make a conviction easier; on the contrary it recognizes the defendant as having been engaged in a lawful business, upon which it simply proposes to lay a tax. What it declares to be a crime is something which he may do or refuse to do afterwards, and in respect to such criminality it is altogether prospective. If he were not bound to render an account on oath, of his purchases as a merchant prior to the passage of the ordinance, it must, therefore, be for some other cause than that the ordinance is an ex post facto law.

2. Upon the supposition that his first objection might not be sustained, the counsel contends in the second place, that if the ordinance be not an ex post facto law, it is a retrospective one, and therefore, void as being against the spirit, if not the letter of the Constitution. For this position the counsel have referred to, and relies upon what is said by Devarris on Statutes: "It is a general rule, say the books, that no statute is to have a retrospect beyond the time of its commencement, for the rule and the law of parliament is, that nova constitutio futuris formam debet imponere, non practeritis. And not only is it the doctrine of the English law, that a statute is not to have a retrospective effect, but it is also founded on the principle of general jurisprudence. A retroactive statute would partake in its character of an ex post facto law, as to all cases of crimes
16 and penalties; and in matters relating to contracts or property, would violate every sound principle." (Devar. on Statutes, 680, 681; 9 Law Lib., 35.) Whenever a retrospective statute applies to crimes and penalties, it is an ex post facto law, and as such is prohibited by the Constitution of the United States, not only to the States, as we have already seen, but to Con-

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15 clare criminal any action done by the defendant before it was passed, nor does it aggravate the criminality of any act which he had previously committed, nor does it change or increase the punishment, or any alleged crime, nor change the rules of evidence to make a conviction easier; on the contrary it recognizes the defendant as having been engaged in a lawful business, upon which it simply proposes to lay a tax. What it declares to be a crime is something which he may do or refuse to do afterwards, and in respect to such criminality it is altogether prospective. If he were not bound to render an account on oath, of his purchases as a merchant prior to the passage of the ordinance, it must, therefore, be for some other cause than that the ordinance is an ex post facto law.

2. Upon the supposition that his first objection might not be sustained, the counsel contends in the second place, that if the ordinance be not an ex post facto law, it is a retrospective one, and therefore, void as being against the spirit, if not the letter of the Constitution. For this position the counsel have referred to, and relies upon what is said by Devarris on Statutes: "It is a general rule, say the books, that no statute is to have a retrospect beyond the time of its commencement, for the rule and the law of parliament is, that nova constitutio futuris formam debet imponere, non practeritis. And not only is it the doctrine of the English law, that a statute is not to have a retrospective effect, but it is also founded on the principle of general jurisprudence. A retroactive statute would partake in its character of an ex post facto law, as to all cases of crimes
16 and penalties; and in matters relating to contracts or property, would violate every sound principle." (Devar. on Statutes, 680, 681; 9 Law Lib., 35.) Whenever a retrospective statute applies to crimes and penalties, it is an ex post facto law, and as such is prohibited by the Constitution of the United States, not only to the States, as we have already seen, but to Con-

gress. (See art. 1, sec. 9, pa. 3.) The omission of any such prohibition in the Constitution of the United States, and also of the State, is a strong argument to show that retrospective laws, merely as such, were not intended to be forbidden. It furnishes an instance for the application of the maxim, "expressio unus est exclusio alterius." We know that retrospective statutes have been passed and enforced in our courts, of which the case of the State *vs.* Pool, 5 Iredell, 105, furnishes a striking example. In that case it was decided that a bond given by a sheriff for the discharge of his official duties, though void, according to the previous decision of the Supreme Court, because those who accepted it had at the time no legal authority to do so, yet will become valid, ab initio, from a subsequent act of the legislature, declaring that such bonds should be considered as having been legally delivered. And this consequence will follow, although the act of assembly was passed, not only subsequently to the institution of the action, but also to the determination in the court below and the appeal to the Supreme Court. In the argument of the case it had been contended that the act ought to be construed so as to extend only to bonds subsequently executed; but, in delivering the opinion of the court, it was said that though statutes ought not to be deemed
17 retrospective, except from necessity, yet the words "have been taken," as applied to the bonds of sheriffs, could not be so interpreted as to render them inoperative. It follows from this that whenever the legislature uses language which is expressly, or by a necessary construction, retrospective, effect must be given to it by the court, unless there be some other ground upon which it must be declared void. There can be no other ground, except its repugnancy to the Constitution of the United States, or of the State; for it was well said by the learned counsel who argued for the State, that there can be but two questions raised upon an act of the legislature:

First. Is it Constitutional?

Second. What is its proper construction?

In connection with this the language of the judges of the supreme court of Massachusetts, in reply to questions propounded to them by the house of representatives of that State, is of grave import, and deserves the serious consideration of every citizen of the country: "The constitution is law, the people having been the legislators; and the several statutes of the Commonwealth, enacted pursuant to the constitution, are law, the senators and representatives being the legislators. But the provisions of the constitution and of any statute are the intentions of the legislature thereby manifested. These intentions are to be ascertained by a reasonable construction, resulting from the application of correct maxims, generally acknowledged and received." (7 Mass. Rep., 525.)

3. The ordinance of the convention upon which we are commenting, uses no doubtful or equivocal language. It expressly requires every merchant, &c., to give an account, on oath, of all his
18 purchases, in or out of the State, during the year 1865. It was passed and ratified, as we have seen, on the 18th day of October, in that year. An important question is thus presented, whether

the convention had the power to lay a tax upon business done prior to the time when the ordinance was adopted. This question is one of very great importance, both to the State and its citizens. In its discussion it will aid us to consider for a moment the extent of the power possessed by the State to levy taxes upon its inhabitants. "The taxing power is one of the highest and most important attributes of sovereignty. It is essential to the establishment and the continued existence of the government. Without it all political institutions would be dissolved, the social fabric would he broken up, and civilization would relapse into barbarism." (State *vs.* Pettway, 2 Jones, Equity, 405.) "The power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power is found in the structure of the government. In imposing a tax, the government acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation. The people of a State, therefore, give to their government a right of taxing themselves and their property; and as the exigencies of the government cannot be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislature and the influence of the constituents over their representatives to guard them against its abuse." (McCullock *vs.* State of Maryland, 4 Wheat. Rep.,
19 428. See also Providence Bank *vs.* Billings, 2 Peters' Rep., 514, at pp. 501, 563.)

Before North Carolina entered into the Federal Union, she possessed, as an independent and sovereign State, this unlimited power of taxation; but by adopting the Constitution of the United States, and becoming a member of the Union, she surrendered a portion of this sovereign power, but only such portion as was necessary to enable the general government to carry on and accomplish the purposes for which it was established as a great nation.

The taxing power of the State is, therefore, now restricted, and the extent of this restriction is very well expressed in the case of Nathan *vs.* The State of Louisiana, 7 Howard Rep., 73: "The taxing power of a State is one of its attributes of sovereignty; and when there has been no compact with the federal government, or cession of jurisdiction for the purpose specified in the Constitution, this power reaches all the property and business within the State which are not properly the means of the general government; and as laid down by this court, it may be exercised at the discretion of the State. The only restraint is the responsibility of the members of the legislature to their constituents." (See also The People *vs.* The Mayor of Brooklyn, decided in the court of appeals of New York, 4 Comstock Rep., 417.) With this large and essential power of taxation unrestricted, except when it may come in conflict with the Constitution of the United States; with a well established right to pass a retrospective law which is not in its nature criminal, we can see nothing to prevent the people from taxing themselves, either through

20 a convention or a legislature, upon property owned, or a business followed, anterior to the passage of the ordinance or the statute. The counsel for the State has referred us to several acts of Congress which have such a retrospective effect in taxing income, &c. (See 12 Statute at Large, at pp. 309, 311, 445 and 472.)

Whether this retrospection could go back beyond the current year, it is unnecessary for us to decide. The ordinance expressly confines the taxation to the year, which is the usual manner provided for the laying and collecting taxes in this State; for though a revenue law may continue in operation for a longer period than one year, the tax lists are to be made out and the taxes themselves collected annually.

4th. We will notice here the objection which was urged in the case of Murchison *vs.* McNiel, 1 Winston, 220, to a law which imposed a tax upon the profits of a business commencing at a time anterior to the passage of the act. It was contended by the able counsel who argued that case for the tax-payer, that the law was unconstitutional, because the impost was in effect a capitation tax, and as such was not imposed in the manner prescribed by the constitution of the State, which declares that "capitation tax shall be equal throughout the State upon all individuals subject to the same." (See Amendments to the State constitution, art. 4, sec. 3, par. 1.) "A capitation tax is (as we said in Gardner *vs.* Hall, 1 Phil., 21) one upon the person simply, without any reference to his property, real or personal, or to any business in which he may be engaged, or to any employment which he may follow. It is rightfully imposed, because of the protection which the government affords to the person, independ-

21 ently of the connexion or relation of the person to anything else. Every kind of tax must be paid, either directly or indirectly, by a person; but if he pay it in consequence of his ownership of property, or of a license to follow a profession or trade, or of making profits by the use of money or other thing, or of a privilege granted to him, either in writing or orally, by the State or by the permission of the State, either expressed or implied, the import is not a capitation tax, that is, it is not tax upon his poll or head simply." It is manifest that the tax complained of by the defendant in this case, is a tax upon his business as a merchant, and not a tax upon his head, in the sense in which a capitation tax is used in the constitution. The requisition upon him to give an account, upon oath, of the amount of his purchases during the year, is for the purpose solely of ascertaining what amount of tax ought to be imposed upon him as a merchant. This requisition, if our reasoning be correct, the State had a right to make, and he ought not to have refused.

5. The last objection urged on the part of the defendant, by his counsel, is that during a considerable part of the year 1865 the county in which he resided and was doing business was occupied by the federal forces, in the prosecution of a war against the State of North Carolina; that he was carrying on his trade as a merchant under a license from an agent of the Treasury Department of the United States, and had paid taxes therefor, both to the military and civil authorities of that government; that after that arrangement was dis-

continued in the month of May, he continued to trade under
22 his license, and had paid the internal revenue tax imposed by an act of the Congress of the United States; that there were no court officers in his county in the exercise of their functions prior to the organization of the provisional government in the State, and that up to that time the town of Beaufort, where he was trading, was in the possession of the federal forces. Under these circumstances it is contended for the defendant that he was not liable to pay any tax to the State upon his business prior to the date of the ordinance passed by the convention. In support of this objection the counsel relies upon two grounds. He insists, first, that the occupation of the town of Beaufort was the occupation of a public enemy of the State, and that for the time of its continuance he cannot now be made liable to pay taxes for business which he carried on while under the dominion of the enemy. Secondly, he contends that he was the licensee of the federal government; that as such he supplied the army and the country within the federal lines with provisions, &c., and that to tax his business would be to tax the means employed, in part, by the United States government for the suppression of the rebellion. In support of his first position under this objection the counsel relies on the case of the United States *vs.* Rice, 4 Wheat. Rep. 246, (4 Curtis, 391.) During the war of the United States with Great Britain, which commenced in 1812, the enemy captured the port of Castine, in the State of Maine, and held possession of, and exercised complete dominion over it, until the treaty of peace between the two countries, in 1815, when it was restored to the United States. During
23 its occupation by the enemy goods were imported into it which after the war were held not to be liable to the duties imposed by the United States revenue laws.

Such goods at the time of their importation were not imported into the United States, and hence, upon the proper construction of its revenue laws, they were held not to be liable to pay duties. The sole question in the case was (as was correctly said by the counsel for the State) one of construction only, and cannot be used as an authority for any purpose. It does not decide, or pretend to decide, that after the territory was restored to the United States, in 1815, the State of Maine might not have taxed the property and business of its inhabitants in the same manner as it taxed the other citizens of the State. But admitting, for the sake of the argument, that the law is otherwise, then we say that the case is not at all, in principle, the same with the one before us. To make it so, is to concede that the State of North Carolina had a right in 1861 to secede from the United States, and thereby become an independent nation; for in such case it must be admitted that the capture of a portion of her territory by the United States in the war which ensued would have been a conquest by a foreign enemy. But such right of secession was repudiated by the first ordinance of the convention of 1865, and the attempted act of secession in 1861 was declared to have been at all times null and void. The capture of Beaufort by the military force of the United States was not, therefore, the conquest by a force in enemy

of the territory of the State of North Carolina, but merely the suppression of the rebellion in that part of the State; and when
24 afterwards the State was rehabilitated, its loyal government was restored to all its former powers, including the power of taxation, over all its inhabitants in every part of its territory. This view is fully sustained by the opinion of Judge Sprague, in the case of the Amy Warbeck, before the United States district court of Massachusetts, and by that of Judge Nelson of the Supreme Court of the United States, in the matter of James Egan on a writ of habeas corpus.

The second position under the last objection is equally untenable. The defendant was certainly not an officer of the United States. He did not hold any commission under that government, nor receive any pay, by way of salary or otherwise, from it. He was merely acting under a license from the authorities of the general government which enabled him to trade on his own account and for his own profit, with the officers and soldiers of the army, and with the people of the surrounding country. For this privilege he was, indeed, required to pay a tax to the United States, but that did not prevent his liability to pay another tax to the State—McCullock *vs.* State of Maryland, ubi supra. The same principle has, we understand, been recently decided by the Supreme Court of the United States in what we called the liquor and lottery cases. If the defendant can be considered, in any proper sense, an agent of the general government, yet his emolument as such is liable to State taxation. He cannot be regarded in a better light than a clerk in a post office, and it has been de-
25 cided by the supreme court of Massachusetts that the income of such a clerk, derived from his employment as such, is taxable by the State—Melcher *vs.* City of Boston, 9 Met. 73. That case was distinguished from Dobbins *vs.* Commissioners of Erie county, 16 Pet. 19, 435, in which a tax upon the "office" of a captain in the United States navy by a statute of Pennsylvania was held to be contrary to the Federal Constitution. The Massachusetts court intimated that the decision in Dobbins' case might have been different had the tax been imposed upon the "income" instead of the "office" of the party. However that might be, it is certain that the present defendant cannot claim any immunity from State taxation on the ground of his having been an officer of the United States.

The judgment of the court below is believed to be right, and must be affirmed.

This cause came on to be argued upon the transcript of the record from the superior court of law of Carteret county, upon consideration whereof, this court is of opinion that there is no error in the record and proceedings of the said superior court. And it is ordered that the opinion of this court, as delivered by the Honorable William H. Battle, one of the judges thereof, be certified to the said superior court to the intent that further proceedings be had therein. And it is considered and adjudged that costs of the appeal incurred by the defendant be paid by him, to wit, $18 76, and that execution issue therefor issue against him and D. H. Z. Bell and J. Y. Dennis, his sureties, for the appeal.

26 FEBRUARY 26, 1866.

Since the rendition of the foregoing judgment, writ of error allowed. No executions to issue except for the costs of this appeal in this court.

Certified by

E. B. FREEMAN, *Clerk.*

STATE OF NORTH CAROLINA:

I, Edmund B. Freeman, clerk of the supreme court of North Carolina, do hereby certify that the foregoing is a full, true and correct transcript of the suit, The State against Josiah L. Bell, as it appears of record in this court.

In testimony whereof, I hereunto set my hand and affix the seal of said court at the city of Raleigh, this 21 day of March, 1867.

[SEAL.] E. B. FREEMAN, *Cl'k.*

[5-cent U. S. int. rev. stamp, cancelled.]

I send herewith the citation and the bond and writ of error.

E. B. F.

Endorsed:

J. L. Bell, pl'ff in error, ag't The State of North Carolina. Transcript from supreme co. N. C. Clerk's fees, $20.